



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

1072093 - R8 SDMS

REGION VIII

999 18th STREET - SUITE 500  
DENVER, COLORADO 80202-2466

June 10, 1998

Ref: ENF-T

Michael R. Thorp  
Heller Ehrman White & McAuliffe  
6100 Columbia Center  
710 Fifth Street  
Seattle, WA 98104-7098

Re: Administrative Order on Consent  
Sandy Smelters Site, Sandy, Utah

Dear Mike:

Enclosed you will find a copy of a proposed Administrative Order on Consent (Order) for removal action to address work to be performed by Asarco at the Sandy Smelters Site. This draft reflects several changes, consistent with our discussions, to your proposed Order transmitted to EPA by letter dated April 15, 1998. As your draft was based on a much earlier AOC at this site, the enclosed draft also incorporates several other minor technical and procedural changes to reflect current model AOC language as well as several changes to reflect site-specific work requirements.

It is my understanding that EPA's On-Scene Coordinator, Paul Peronard, and Asarco's representative, Jim Fricke, have engaged in discussions concerning a workplan which would be attached to the Order. I understand that Mr. Fricke is in the process of drafting this workplan for EPA approval.

EPA appreciates Asarco's willingness to conduct response actions at the Site and we expect that this Order can be executed in the near future so that work can commence at the Site.

If you have any questions or comments on this Order, please contact me at 303/312-6356 or Andy Lensink at 303/312-6908.

Sincerely,

Paul J. Rogers  
Enforcement Specialist



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Enclosure

cc: Don Robbins, Asarco  
Bill Townsend, UDEQ  
Andy Lensink, ENF-L  
Paul Peronard, EPR-ER



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## ROUTING AND TRANSMITTAL SLIP

Date

6-10-98

TO: (Name, office symbol, room number,  
building, Agency/ Post)

Initials

Date

1. Andy Lensink, ENF-1

2.

3.

4.

5.

Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

REMARKS

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FROM: (Name, org. symbol, Agency/ Post)

Room No. — Bldg.

Phone No.

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION VIII

IN THE MATTER OF:

Sandy Smelters Site  
Sandy, Utah

Site No. 08-Y4

ASARCO Incorporated, a New Jersey  
corporation

RESPONDENT.

Proceeding Under Section 106(a), of the  
Comprehensive Environmental Response,  
Compensation, and Liability Act, as amended,  
42 U.S.C. § 9606(a)

EPA Docket No.  
CERCLA-VIII-98-\_\_

ADMINISTRATIVE ORDER ON CONSENT  
FOR TIME CRITICAL REMOVAL ACTION

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#### ATTACHMENTS

EXHIBIT 1.	WORK PLAN
EXHIBIT 2.	LISTING OF PROPERTIES AT WHICH WORK WILL BE COMPLETED

## **I. JURISDICTION AND GENERAL PROVISIONS**

1. This Administrative Order on Consent (Order) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and ASARCO Incorporated (Asarco or Respondent). This Order concerns the performance of a removal action by Respondent and reimbursement of response costs incurred by the United States in connection with the Sandy Smelters Site in Sandy, Salt Lake County, Utah. This Order requires the Respondent to conduct the time-critical removal action described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

2. This Order is issued under the authority vested in the President of the United States by section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a) (1982), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12,580, 52 Fed. Reg. 2,923 (1987), and further delegated to Regional Administrators on September 13, 1987, by EPA Delegation No. 14-14-C. This authority has been further delegated to the Assistant Regional Administrator, Office of Ecosystems Protection and Remediation, EPA Region VIII.

3. Respondent's participation in this Order shall not constitute or be construed as an admission of liability or EPA's findings or determinations contained in this Order except in a proceeding to enforce the terms of this Order. Respondent agrees to undertake all actions required by this Order. In any action by EPA or the United States to enforce the terms of this Order, Respondent consents to and agrees not to contest the authority or jurisdiction of EPA to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms.

4. In signing this Order the Respondent denies any and all legal and equitable liability and reserves all defenses under any federal, state, local, or tribal statute, regulation, or common law for any claim, endangerment, nuisance, response, removal, remedial, or other costs or damages incurred or to be incurred by the United States, the State or other entities or persons or any natural resource damages as a result of the release or threat of release of hazardous substances to, at, from or near the Site, except that any such defense shall be waived in any action by the United States or EPA to enforce the terms of this Order. Signing this Order is not an acknowledgment by Respondent that any release or threatened release of a hazardous substance constituting an imminent and substantial endangerment to human health or the environment has occurred or exists at the Site except in an action to enforce this Order. Respondent does not admit and retains the right to controvert any of the factual or legal statements or determinations made herein in any judicial or administrative proceeding except in an action to enforce this Order. This Order shall not be admissible in any judicial or administrative proceeding against the Respondent, over its objection, as proof of liability or an admission of any fact dealt with herein, except that it shall be admissible in an action by the United States or EPA to enforce this Order.

## **II. PARTIES BOUND**

5. This Order applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Order.

6. Respondent shall insure that its contractors, subcontractors and representatives receive a copy of this Order and comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

## **III. DEFINITIONS**

7. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or such regulations. For purposes of this Order, the following terms shall have the meanings set forth below.

**"Contractor"** means any person, including the contractors, subcontractors, consultants, or agents, retained or hired by Respondent to undertake any work under this Order.

**"Day"** means calendar day, unless otherwise specified. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business on the next working day. Time will be computed in accordance with Rule 6 of the Federal Rules of Civil Procedure, unless otherwise specified.

**"Deliverable"** means any written product, including, but not limited to, plans, reports, memoranda, data, or other documents that Respondent must submit to EPA under this Order.

**"NCP"** means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated under section 105 of CERCLA, 42 U.S.C. § 9605, and codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

**"Order"** means this Order, the exhibits attached to this Order, and all documents or modifications to documents incorporated into this Order according to the procedures set forth herein. If there is a conflict between this Order and any documents incorporated into this Order, the terms of the Order shall control.

**"Site"** means the Sandy Smelters Site, an area of approximately one square mile located in Sandy, Utah and which is also referred to as Historic Sandy City, including the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action.



"Work" means all tasks Respondent is required to perform under this Order.

"Work Plan" means the detailed work plan implementing the requirements of this Order, attached hereto as Exhibit 1, and incorporated herein by reference. The work plan includes the work plan itself, the sampling and analysis plan, and any other plans or modifications thereto described approved by EPA pursuant to this Order.

#### **IV. STATEMENT OF PURPOSE**

8. The objectives of EPA and Respondent are for Respondent: (a) to perform, with EPA oversight, a time critical removal action consistent with CERCLA and the NCP to protect public health and welfare and the environment; and (b) to reimburse the United States for response costs incurred by the government with respect to this Order.

9. The activities conducted under this Order are subject to approval by EPA and shall be conducted in compliance with CERCLA, the NCP, and all applicable EPA guidance, policies, and procedures and any amendments to CERCLA, the NCP, or EPA guidance, policies, or procedures.

#### **V. FINDINGS OF FACT**

Based upon available information, including the Administrative Record in this matter, EPA hereby finds that:

10. Sandy City, Utah is located 15 miles south of Salt Lake City, and has a population of approximately 80,000. Historically, Sandy City was home to three smelters and one sampling works in the late 1800s. The Mingo Smelter was located at 50 East 9000 South in Sandy City, Utah. This smelter processed lead, copper, and zinc ores. Located across the street, northeast of the Mingo Smelter, was the Saturn Smelter, which processed lead ore. It shut down in 1876. The Last Chance Smelter, also known as Flagstaff #2 Smelter, also processed lead ore. This smelter was located on 400 East 8680 South, where the Sandy City Parks and Recreation and Sandy Elementary School are now located. The Pioneer Ore Sampling Works was located at 8580-8586 South 150 East and also processed lead ore. Smelting operations typically produced stack emissions with elevated metal content. Sampling mills typically crushed and tested ores to determine mineral content resulting in ore wastes with high metal content.

11. All of the smelters and the sampling mill, which have not operated for many years, are located in what are now at least partially residential areas. The lead contamination at the Sandy Smelters Site is predominantly from stack emissions produced by smelting and sampling operations. There are a few small slag piles remaining on-site on the Mingo Smelter property, which is now owned by the Sandy Regional Convalescent and Rehabilitation Center (SRCRC), and on some city-owned property located on an access road between the Sandy Fire Department and the SRCRC. Railroad tracks run through the Site. The slag that was used as ballast can be

seen on the tracks. Pieces of slag can also be seen on the side of the road along 9000 South and in some of the residential property gardens across from the Sandy City Parks and Recreation.

12. In July, 1992, surface soil screening activities were conducted on 15 sites in the Salt Lake valley. This was known as Phase I of the Salt Lake Valley Smelter Study. Based on results of Phase I, future efforts were then concentrated on the Sandy Smelters Site. Sampling at the Site, known as Phase II which centered around these former smelters and sampling sites, began in November, 1992, and continued through March, 1993.

13. The levels of lead found in the contaminated soils on the Site during the surface sampling range from lower than the Detection Limit of parts per million (ppm) lead to 10,191 ppm lead. Interior dust samples range from 5.4 to 791 micrograins per gram (ug/g) lead. Six samples of known lead concentrations from the site were submitted for X-ray Fluorescence (XRF) and TCLP analysis. The XRF results ranged from 534 to 9031 ppm lead and the TCLP results were all less than 5 mg/L.

14. On April 29, 1994 EPA issued an Action Memorandum calling for a time-critical removal action at the Sandy Smelters Site. In accordance with the terms of that Action Memorandum, on August 25, 1994 EPA and Asarco entered into an Administrative Order on Consent. Under the terms of the Order, Asarco remediated a total of seventeen residential properties where at least one soil sample contained lead above 4,000 ppm. EPA conducted remediation at an additional twenty-two properties. Soil was removed to a depth of eighteen inches.

15. Following the initial removal actions conducted by Asarco and EPA, EPA conducted a further evaluation of site data and determined that there were additional residential properties with soils with lead levels above 4,000 ppm, and some residential properties with arsenic levels above 400 ppm. On June 6, 1996 EPA issued an Action Memorandum Amendment authorizing a time-critical removal at these additional properties. Thereafter, EPA conducted these removals at an additional seven residences.

16. In June, 1997 a working group comprised of representatives of EPA, Utah, Sandy City, Asarco, and the Salt Lake City/County Health Department met to consider whether removal actions had been sufficiently protective and to explore implementability, community acceptance and state acceptance of options EPA might be considering for additional work at the Site. Taking into consideration the recommendations of the work group, EPA issued an Action Memorandum calling for a time-critical removal of soil in yards where the average lead concentration in the surface (0"-2") exceeds the action level of 1200 ppm, or where the average lead concentration in the subsurface (0"-18") exceeds the action level of 1800 ppm. Depending on the distribution of contaminants in the soil, the soil will be removed: 1) until surface soils are less than 1200 ppm and subsurface soils are less than 1800 ppm or 2) to a depth of eighteen inches, both replaced with clean fill.

17. Elevated concentrations of lead are found in and around private properties and play areas, exposing children to lead. Smelting operations typically produced stack emissions

with elevated metal content. The Mingo Smelter processed lead, copper, and zinc ores and the Saturn Mining and Smelting Company, the Last Chance Smelter, also known as Flagstaff #2 Smelter, and the Pioneer Ore Sampling Works processed lead ore.

18. The potential threat of direct exposure exists through the inhalation and ingestion of lead particles and dust. There are properties at the site with elevated lead concentrations that are readily accessible to all populations. The population at highest risk on the site, and the persons most exposed because of their activities, are children.

19. Lead is a hazardous substance as defined by Section 101(14) of CERCLA. Lead can enter the body via ingestion and inhalation. Although it may also enter the body through the skin, dermal absorption of inorganic lead compounds is less significant than absorption through other routes. Children appear to be the segment of the population at greatest risk from toxic effects of lead.

20. Exposure to lead can cause a decrease in the concentration of blood proteins throughout the body, and can impair the utilization of iron. Exposure to lead can produce long-term and possibly permanent neuropsychological effects in children, such as learning disabilities and behavioral problems. As exposure levels increase, reproductive effects, such as still births and miscarriages can occur and severe long-term damage can occur to the blood forming system, the nervous system, the heart and blood vessels, kidney and liver. Lead crosses the placenta and has been shown to adversely affect the fetus. Lead is classified as a probable human carcinogen with low potency.

21. The Saturn Silver mining Co. owned and operated the Saturn Smelter. In 1891 the property on which the Saturn Smelter was located was purchased by the owners of the Mingo smelter.

22. The Mingo Smelter was originally operated as the Mountain Chief Smelter between 1872 and 1873 or 1876. The operator of the Smelter during this period is unknown. The Mingo Furnace Company/Pennsylvania Lead Company (name change in 1893) owned and operated the Mingo Smelter from 1878 to 1899. Respondent purchased the Mingo Smelter site from the Pennsylvania Lead Company in 1899, during the time of Respondent's initial organization. Respondent operated the Mingo Smelter intermittently from May 1899 to December 1900 and June 1901 to June 1902.

## **VI. CONCLUSIONS OF LAW AND DETERMINATIONS**

23. Based on the preceding Findings of Fact and the administrative record for the Site, EPA has made the following conclusions of law and determinations:

- a. The Sandy Smelters Site is a "facility," as defined in section 101(9) of CERCLA, 42 U.S.C. § 9601(9);

- b. Substances found at the Site are "hazardous substances" as defined in section 101(14) of CERCLA, 42 U.S.C. §§ 9601(14);
- c. The presence of hazardous substances at the Site or the past, present, or potential future migration of hazardous substances described in Section V of this Order constitutes an actual and/or threatened "release" as defined in section 101(22) of CERCLA, 42 U.S.C. § 9601(22);
- d. Respondent is a "person" as defined in section 101(21) of CERCLA, 42 U.S.C. § 9601(21);
- e. Respondent is a liable party under sections 104, 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607, and 9622;
- f. The actual or threatened release of hazardous substances from the facility may present an imminent and substantial endangerment to public health or welfare or the environment; and,
- g. The actions required by this Order are necessary to protect the public health or welfare or the environment, are in the public interest, are consistent with CERCLA and the NCP, and will expedite effective remedial action and minimize litigation.

#### **VII. NOTICE TO STATE**

24. EPA has notified the state that this Order is being issued and that EPA is the lead agency for coordinating, overseeing, and enforcing the response action required by the Order.

#### **VIII. WORK TO BE PERFORMED**

25. Respondent shall perform the following work:

- a. Health and Safety Plan. Within 15 days of the effective date of this Order, Respondent shall submit to EPA a site health and safety plan. The plan shall be prepared in accordance with the Occupational Health and Safety Administration regulations applicable to Hazardous Waste Operations and Emergency Response, 29 C.F.R. § 1910.
- b. Removal Action. Respondent shall conduct the removal action set forth in the Work Plan (Exhibit 1) at the properties listed on Exhibit 2.

26. Respondent shall conduct activities and submit deliverables as provided by this Order and approved by EPA. All work is to be conducted in accordance with the schedule set forth in Exhibit 1 of this Order and the standards, specifications, schedules, and other requirements of this Order, the work plan, and any work plan amendment approved by EPA.

27. All work under this Order shall be under the direction and supervision of qualified personnel. On or before the effective date of this Order, and before work begins, Respondent shall notify EPA in writing of the names, titles, and qualifications of the personnel, including contractors and laboratories, to be used in carrying out such work. The qualifications of the persons undertaking work for Respondent shall be subject to EPA's review for verification that such persons meet minimum technical background and experience requirements. This Order is contingent on Respondent's demonstration to EPA's satisfaction that Respondent is qualified to perform properly and promptly the actions set forth in this Order. If EPA disapproves in writing of any person(s)', qualifications, Respondent shall notify EPA of the identity and qualifications of the replacement(s) within 7 days of the written notice. If EPA subsequently disapproves of the replacement(s), EPA reserves the right to terminate this Order, conduct all or part of the removal action, and seek reimbursement of costs from Respondent. During the course of work, Respondent shall notify EPA in writing 7 days in advance of any changes or additions in the personnel used to carry out such work, providing their names, titles, and qualifications. EPA shall have the same right to approve changes and additions to personnel as it has hereunder regarding the initial notification.

28. EPA reserves the right to comment on, modify, and direct changes for all deliverables. Respondent must fully correct all deficiencies and incorporate and integrate all information and comments, as directed by EPA, within 7 days of receipt of EPA comments. At the time any revised document is submitted, Respondent shall submit a cover letter describing how each EPA comment was addressed and a certification that no changes were made other than those identified in the cover letter. Failure to incorporate or address any EPA comment or modification or to identify any other changes made is a violation of this Order. EPA may unilaterally modify any deliverable if Respondent fails to make the required changes.

29. Respondent shall not perform any physical on-site activity under this Order until receiving EPA approval for such activity. While awaiting EPA approval, Respondent shall proceed in accordance with the schedule set forth in this Order with all other tasks and activities which may be conducted independently of the physical on-site activity that has not been approved.

30. If, after receiving EPA comments, Respondent conducts an activity or amends or revises a deliverable in a way that does not fully reflect EPA's directions for changes, EPA retains the right to seek stipulated or statutory penalties, perform its own studies or cleanup and seek reimbursement from Respondent for its costs, and/or seek other relief.

31. Neither failure of EPA to expressly approve or disapprove Respondent's submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA.

32. No later than 5 days prior to any off-site shipment of hazardous substances and/or hazardous wastes from the Site for disposal, Respondent shall provide written notification to the appropriate state environmental official in the receiving state and to the EPA Project Coordinator of such shipment.

- a. This notification shall be in writing, and shall include the following information: (1) the name and location of the facility to which the hazardous substances or wastes are to be shipped; (2) the type and quantity of the hazardous substances or wastes to be shipped; (3) the expected schedule for the shipment; and (4) the method of transportation. Respondent shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances or wastes to another facility within the same state, or to a facility in another state.
- b. The identity of the receiving facility will be determined by Respondent. Respondent shall provide all relevant information, including the information noted above, as soon as practical after a decision is reached, but in no event later than specified in subparagraph a.

#### **IX. MODIFICATION OF WORK**

33. If, at any time before termination of this Order, Respondent identifies a need for additional data, Respondent shall submit a memorandum documenting the need for additional data to the EPA Project Coordinator within 7 days of such identification. EPA, in its discretion, will determine whether the additional data will be collected by Respondent and whether it will be incorporated into deliverables.

34. In the event of unanticipated or changed circumstances at the Site, Respondent shall notify the EPA Project Coordinator by telephone within 24 hours of discovery of the unanticipated or changed circumstances. If the unanticipated or changed circumstances pose an immediate threat to human health or welfare or the environment, Respondent shall notify EPA and the state immediately. If EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the work to be performed, EPA may modify or amend or direct Respondent to modify or amend the work accordingly or take other actions authorized by CERCLA or the NCP. Respondent shall perform the work as modified or amended.

35. EPA may determine that work in addition to tasks defined in the work plan may be necessary to accomplish the objectives of the removal action as set forth in Section IV of this Order. EPA may require that Respondent perform such additional work, if it determines that such work is necessary to complete the removal action. Respondent shall either confirm its willingness to perform the additional work in writing to EPA within 7 days of receipt of the EPA request or invoke dispute resolution pursuant to Section XVI of this Order. Subject to EPA resolution of any dispute, Respondent shall implement the additional tasks which EPA determines are necessary. The additional work shall be completed according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the work plan or written work plan supplement. EPA reserves the right to conduct the additional work itself at any point, to seek reimbursement from Respondent, and/or to seek any other appropriate relief.

## **X. QUALITY ASSURANCE**

36. Respondent shall assure that work performed, samples taken, and analyses conducted conform to the requirements of this Order and the approved sampling and analysis plan. Respondent will assure that its field personnel are properly trained in the use of field equipment and chain-of-custody procedures.

37. To provide quality assurance and maintain quality control, Respondent shall:

- a. Use a laboratory which has a documented quality assurance program that complies with EPA guidance;
- b. Ensure that such laboratory performs analyses according to EPA-approved methods or methods deemed satisfactory by EPA (if a non-approved method is proposed, Respondent shall submit all protocols to be used for analyses to EPA for approval at least 30 days before beginning analyses);
- c. Ensure that EPA personnel or authorized representatives are allowed access to such laboratory and personnel; and
- d. Upon EPA request, have such laboratory analyze samples submitted by EPA for quality-assurance monitoring.

38. In the event that Respondent fails to use the quality assurance/quality control practices and procedures as outlined in the approved sampling and analysis plan, EPA reserves the right to conduct the work or any portion thereof pursuant to its authority under CERCLA, to seek reimbursement from Respondent, and/or to seek any other appropriate relief.

## **XI. PROGRESS REPORTS AND MEETINGS**

39. During the course of work under this Order, Respondent shall submit the following reports to, and participate in the following meetings with, EPA.

- a. Weekly Construction Meetings. During physical onsite conduct of the removal action, Respondent shall meet with EPA on a weekly basis to discuss, at a minimum, the weekly activities, field adjustments, change orders, summaries of problems and actions to rectify problems, and other such information as is customary in the industry. The weekly meetings shall be scheduled on a week to week basis.
- b. Monthly Progress Reports. Respondent shall also prepare monthly progress reports containing the following information:
  - (1) Actions taken to comply with this Order, including plans and actions completed during the preceding month;

- (2) Activities during the preceding month that deviated from or were carried out in addition to those planned;
- (3) All problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays;
- (4) Work planned for the next month with schedules relating such work to the overall project; and
- (5) All results of sampling and tests and all other data collected or received by Respondent during the preceding month.

Respondent shall submit these reports to EPA on or before the 5th day of each month during which this order is in effect.

- c. Final Report. Respondent shall submit a detailed report documenting the work performed under this Order within 30 days of completion of the removal action.

40. Respondent shall make presentations at and participate in meetings at the request of EPA during the initiation, conduct, and completion of the removal action. In addition to discussion of the technical aspects of the removal action, topics may include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

41. EPA is responsible for conducting community relations with respect to the Site. Respondent shall cooperate with EPA in providing information regarding implementation of this Order to the public. If requested by EPA, Respondent shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

## **XII. ACCESS, SAMPLING, AND AVAILABILITY OF INFORMATION**

42. EPA, the state, and their authorized representatives may enter and freely move about all property at the Site and offsite areas where work, if any, is being performed, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the site or Respondent and its contractor(s) pursuant to this Order; reviewing the progress of Respondent in carrying out the terms of this Order; conducting tests as EPA or its authorized representatives deem necessary; using a camera, sound recording device, or other documentary type equipment; and verifying the data submitted to EPA by Respondent. Respondent shall allow these persons to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to work undertaken in carrying out this Order. Nothing herein shall be interpreted as limiting or affecting EPA's or the state's right of entry or inspection authority under federal law.



43. If the Site or any off-site area needed for conduct of the removal action is owned in whole or in part by parties other than those bound by this Order, Respondent will obtain, or use its best efforts to obtain, written site access agreements from the owner no later than 7 days prior to the time such access is needed. Such agreements shall provide access for EPA, the state, and their authorized representatives and Respondent or its authorized representatives. Such agreements shall specify that Respondent is not EPA's or the state's representative with respect to liability associated with site activities. Copies of such agreements shall be provided to EPA prior to Respondent's initiation of field activities.

44. If access agreements are not obtained within the time referenced above, Respondent shall promptly notify EPA of its failure to obtain access. EPA may, but is not required to, obtain access for Respondent, perform those tasks or activities with EPA contractors, or terminate the Order in the event that Respondent cannot obtain access agreements. In the event that EPA performs those tasks or activities that require such access with EPA contractors and does not terminate the Order, Respondent shall perform all other activities not requiring access to that area, and shall reimburse EPA for all costs incurred in performing such activities. Respondent additionally shall integrate the results of any such tasks undertaken by EPA into its deliverables. Respondent agrees to indemnify the United States as specified in Section XXV of this Order. Respondent shall reimburse EPA for all costs and attorney fees incurred by the United States to obtain access for Respondent in accordance with Section XIX of this Order.

45. All results of sampling, tests, modeling, or other data (including raw data) generated by Respondent, or on Respondent's behalf, during implementation of this Order, shall be submitted to EPA and the state in the monthly progress report as described in Section XI of this Order. EPA will make available to Respondent validated data generated by EPA unless it is exempt from disclosure by any federal or state law or regulation.

46. Respondent will notify EPA and the state in writing at least 7 days prior to mobilizing or conducting significant field events as described in the work plan or sampling and analysis plan. At the verbal or written request of EPA or the state or their authorized representatives, Respondent shall allow EPA or the state and/or their authorized representatives to collect whatever samples EPA or the state deems necessary, including split or duplicate samples of any samples collected by Respondent in implementing this Order.

47. By entering into this Order, Respondent waives any evidentiary objections to any data gathered, generated, or evaluated by EPA, the state, or Respondent in the performance or oversight of the work that has been verified according to EPA-approved quality assurance/quality control procedures. If Respondent objects to any other data relating to the removal action, Respondent shall submit to EPA a report that identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days of the monthly progress report containing the data or within 15 days of receipt of the data from EPA, whichever is applicable.

48. Respondent shall provide to EPA and the State, upon request, copies of all documents and information within its possession or control or that of its contractors relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analyses, chain-of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, personal logs of Respondent's on-site representatives, or other documents or information related to the work. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the work.

49. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Order to the extent permitted by section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Such claims shall be asserted in the manner described by 40 C.F.R. § 2.203(b) and substantiated at the time the claim is made. Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Respondent that the documents or information are not confidential under the standards of section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), the public may be given access to such documents or information without further notice to Respondent.

50. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data and materials or information submitted pursuant to this Order, or any other documents or information evidencing conditions at or around the Site.

51. EPA will compile the administrative record file for the removal action. Upon EPA request, Respondent must submit to EPA documents developed during the course of work which may serve as the basis for selection of any response action. Respondent shall provide copies of plans, memoranda (including documentation of field modifications), recommendations for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports, and other reports. Respondent must additionally submit, upon request, any previous studies conducted under state, local, or other federal authorities relating to selection of the response action, and all communications between Respondent and state, local, or other federal authorities concerning selection of the response action. If EPA requests, Respondent shall establish a community information repository at or near the Site to house a copy of the administrative record.

### **XIII. PROJECT COORDINATORS**

52. EPA and Respondent shall each designate their own Project Coordinator.

The EPA Project Coordinator is:

Paul Peronard (EPR-ER)  
On-Scene Coordinator  
EPA Region VIII  
999 18th Street, Suite 500 Denver, CO 80202-2405  
(303) 312-6808

Respondent's Project Coordinator is:

Donald A. Robbins  
Director, Environmental Services  
ASARCO Incorporated  
3422 South 700 West  
Salt Lake City, UT 84119-4191  
(801) 262-2459

The Project Coordinator shall be responsible for overseeing the implementation of this Order. EPA and Respondent each have the right to change their respective Project Coordinator. Respondent shall notify EPA in writing of the name, title, address, and telephone number of the new Project Coordinator at least 7 days prior to the change.

53. To the maximum extent possible, communications between EPA and Respondent shall be directed to the Project Coordinator. All written communications, including, but not limited to, all correspondence, approvals, disapprovals, and deliverables submitted under this Order shall be hand-delivered, sent overnight mail, or sent by certified mail, return receipt requested, to the Project Coordinators or to any other persons whom EPA may designate in writing. Documents submitted to EPA shall be sent in triplicate. Documents to be submitted to EPA shall also be sent to:

Bill Townsend  
Division of Environmental Response and Remediation  
Utah Department of Environmental Quality  
288 North 1460 West  
Salt Lake City, UT 84114-4880  
801/536-4218

54. The EPA Project Coordinator shall have the authority vested in the Remedial Project Manager and the On-Scene Coordinator by the NCP. In addition, the EPA Project Coordinator shall have the authority, consistent with the NCP, to halt any work required by this Order and to take any action authorized by CERCLA or the NCP. The absence of the EPA Project Coordinator from the Site shall not be cause for the stoppage or delay of work.

55. EPA may arrange for assistance in its oversight and review of the conduct of the removal action. EPA's authorized representative may observe work and make inquiries in the absence of EPA, but is not authorized to modify the requirements of this Order

#### **XIV. OTHER APPLICABLE LAWS**

56. All activities undertaken by Respondent shall be in compliance with all federal, state and local laws and regulations, including permit requirements, unless an exemption is provided by section 121(e) of CERCLA, 42 U.S.C. SS 9621(e). Respondent shall identify and seek to obtain all permits, licenses, and approvals required for performance of work in sufficient time to perform work as scheduled.

#### **XV. RECORD PRESERVATION**

57. All records and documents in Respondent's possession that relate in any way to the Site shall be preserved while this Order is in effect and for a minimum of 10 years after termination of this Order. Respondent shall acquire and retain copies of all documents that relate to the Site and are in the possession of its employees, accountants, contractors, or attorneys. After this 10-year period, Respondent shall notify EPA at least 90 days before the documents are scheduled to be destroyed. If EPA requests that the documents be saved, Respondent shall, at no cost to EPA, provide EPA with the documents or copies of the documents.

#### **XVI. DISPUTE RESOLUTION**

58. Any disputes concerning activities or deliverables required under this Order, for which dispute resolution has been expressly provided, shall be resolved as follows: If Respondent objects to any EPA notice of disapproval or requirement made pursuant to this Order, Respondent shall notify the EPA Project Coordinator in writing of its objections within 7 days of receipt of the disapproval notice or requirement. Respondent's written objections shall define the dispute, state the basis of Respondent's objections, and be sent certified mail, return receipt requested, to the EPA Project Coordinator. EPA and Respondent then have an additional 7 days to reach agreement. Respondent shall proceed in accordance with EPA's final decision regarding the matter in dispute, regardless of whether Respondent agrees with the decision. If Respondent does not agree to perform or does not actually perform the work in accordance with EPA's final decision, EPA reserves the right in its sole discretion to conduct the work itself, to seek reimbursement from Respondent, to seek enforcement of this Order, to seek stipulated penalties, and/or to seek any other appropriate relief.

59. Respondent is not relieved of its obligations to perform and conduct activities and submit deliverables on the schedule included in the Statement of Work while a matter is pending in dispute resolution. The invocation of dispute resolution does not stay the accrual of stipulated penalties under this Order.

## **XVII. STIPULATED PENALTIES**

60. For each day that Respondent fails to produce a deliverable of acceptable quality or in a timely manner, or otherwise fails to perform in accordance with the requirements of this Order, Respondent shall be liable for stipulated penalties. Penalties begin to accrue on the day that performance is due or a violation occurs and extend through the period of correction. When a revised submission by Respondent is required, stipulated penalties shall continue to accrue until a satisfactory deliverable is produced. EPA will seek to provide written notice of violations that are not based on timeliness; nevertheless, penalties shall accrue from the day a violation commences. Payment shall be due within 30 days of receipt of a demand letter from EPA.

61. Stipulated penalties shall accrue in the following amounts for each day that Respondent fails to complete a deliverable in a timely manner, fails to produce a deliverable of acceptable quality, or otherwise fails to perform in accordance with the requirements of this Order:

<u>Period of Failure To Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 14th day	\$ 1,000
15th through 30th day	\$ 5,000
31st day and beyond	\$10,000

62. Respondent shall make all payments by forwarding a certified or cashiers check, made payable to the "Hazardous Substance Superfund," to:

Mellon Bank  
EPA Region VIII  
Attn: Superfund Accounting  
P.O. Box 360859M  
Pittsburgh, PA 15251

or other such address as EPA may designate in writing. Payments must be identified as "Stipulated Penalties--Sandy Smelter Site" and shall reference the payor's name and address, the EPA site identification number (Site No. 08-Y4), and the docket number of this Order. Copies of the transmittal letter and check shall be sent to the EPA Project Coordinator at the time of payment.

63. Respondent shall pay interest on any unpaid balance, which shall begin to accrue at the end of the 30-day period, at the rate established by the Department of Treasury pursuant to 30 U.S.C. § 3717.

64. Respondent may dispute EPA's right to the amount of penalties assessed by invoking the dispute resolution procedures under Section XVI herein. Penalties shall accrue but

need not be paid during the dispute resolution period. If Respondent does not prevail upon resolution, all penalties and interest accrued shall be due to EPA within 30 days of resolution of the dispute. If Respondent prevails upon resolution, no penalties or interest shall be paid.

65. In the event that EPA provides for corrections to be reflected in the next deliverable and does not require resubmission of that deliverable, stipulated penalties for that interim deliverable shall cease to accrue on the date of such decision by EPA.

66. The stipulated penalties provisions do not preclude EPA from pursuing any other remedies or sanctions which are available to EPA because of Respondent's violation of or failure or refusal to comply with this Order. Such remedies and sanctions include, but are not limited to, the assessment of penalties pursuant to section 109 of CERCLA, 42 U.S.C. § 9609, the award of treble damages pursuant to section 107(c)(3) of CERCLA, 42 U.S.C. SS 9607(c)(3), and conduct of all or part of the removal action by EPA. Payment of stipulated penalties does not alter Respondent's obligation to complete performance under this Order.

#### **XVIII. FORCE MAJEURE**

67. "Force majeure," for purposes of this Order, is defined as any event arising from causes entirely beyond the control of Respondent and of any entity controlled by Respondent, including its contractors, that delays the timely performance of any obligation under this Order notwithstanding Respondent's best efforts to avoid the delay. The requirement that Respondent exercise "best efforts to avoid the delay," includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring, and (b) following the potential force majeure event, such that the delay is minimized to the greatest extent practicable. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any work to be performed under this Order or the financial difficulty of Respondent to perform such work.

68. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, Respondent shall notify by telephone the EPA Project Coordinator, or in his or her absence, the Program Manager of the Superfund Assessment, Emergency Response and Preparedness Team, EPA Region VIII, (303) 312-6827, within 24 hours of when Respondent knew or should have known that the event might cause a delay. Within 5 days after Respondent knew or should have known that the event might cause a delay, Respondent shall provide in writing (a) the reasons for the delay; (b) the anticipated duration of the delay; (c) all actions taken or to be taken to prevent or minimize the delay; (d) a schedule for implementation of any measures to be taken to mitigate the effect of the delay; and (e) a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Respondent shall exercise best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure.

69. If EPA agrees that the delay or anticipated delay is attributable to force majeure, the time for performance of the obligations under this Order that are directly affected by the force majeure event shall be extended by agreement of the parties, pursuant to Section XXIV of this Order, for a period of time not to exceed the actual duration of the delay caused by the force majeure event. An extension of the time for performance of the obligation directly affected by the force majeure event shall not, of itself, extend the time for performance of any subsequent obligation.

70. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, or does not agree with Respondent on the length of the extension, the issue shall be subject to the dispute resolution procedures set forth in Section XVI of this Order. In any such proceeding, to qualify for a force majeure defense, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay was or will be warranted under the circumstances, that Respondent did exercise or is exercising due diligence by using its best efforts to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of this section.

71. Should Respondent prevail in the dispute pursuant to the previous paragraph, the delay at issue shall not be deemed a violation of or failure or refusal to comply with this Order.

#### **XIX. REIMBURSEMENT OF RESPONSE COSTS**

72. Annually after the anniversary date of this Order, EPA shall submit to Respondent an accounting of response costs incurred by the United States in connection with this Order. Such costs shall include, but not be limited to, all direct and indirect response costs incurred by the EPA in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, overseeing, or enforcing this Order, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, and State of Utah cooperative agreement costs. Within 30 days of receipt of each accounting, Respondent shall reimburse the United States for all uncontested response costs (see Paragraph 74).

73. The accounting described in the previous paragraph shall consist of a SCORES cost summary report (or its equivalent). Respondent expressly waives the right to request additional documentation.

74. Respondent may contest payment of any cost under Paragraph 72 if it determines that the United States has made an accounting error or has included a cost item that is inconsistent with CERCLA or the NCP, by initiating dispute resolution under Section XVI of this Order before payment is due. The written request for dispute resolution shall specifically identify the contested costs and provide a detailed explanation of the basis for the objection. In the dispute resolution process, Respondent bears the burden of proving that an accounting error has been made or that the costs are inconsistent with CERCLA or the NCP.

75. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent, on or before the due date, shall pay the full amount of the contested costs into an escrow account in a bank acceptable to EPA. Respondent shall simultaneously transmit a copy of the check to the EPA Project Coordinator. If Respondent subsequently prevails in all or part of the dispute, Respondent may withdraw from the escrow account the amount upon which it prevailed in the dispute plus interest accrued on such amount. If Respondent does not prevail in all or part of the dispute, the full amount owed to EPA shall be withdrawn from the escrow account and this amount, plus interest calculated in accordance with Paragraph 77 of this section, shall be transmitted to EPA within three days after the completion of dispute resolution.

76. Respondent, shall, within 30 days of the aforementioned EPA bill, make payment by cashier's check, certified check or wire transfer according to the following procedures:

a. Regular Mail

Mellon Bank  
EPA Region VIII  
Attn: Superfund Accounting  
Post Office Box 360859  
Pittsburgh, Pennsylvania 1521-6859

b. Federal Express, Airborne, Etc:

Mellon Bank  
3 Mellon Bank Center  
Room #153-2713  
Pittsburgh, PA 15259  
Ref: Lockbox 360859

c. Wire Transfer:

Payment made by wire transfer shall be sent directly to the Federal Reserve Bank in New York City, New York with the following information:  
ABA = 021030004  
TREAS NYC/CTR/  
BNF=/AC-68011008

d. Information To Be Included

The following information shall be included on the face of the cashier's or certified check or with the wire transfer:

Site Name: Sandy Smelters Site



Site No.: 08-Y4  
Docket No.: CERCLA VIII-98-

e. Payment Credit

Payment by cashier's or certified check or wire transfer must be received by 11:00A.M. Eastern Time for same day credit.

f. Copies of the transmittal letter and check or other payment form shall also be sent to:

EPA Enforcement Specialist,  
Sandy Smelters Superfund Site  
U.S. Environmental Protection Agency  
Suite 500 (8ENF-T)  
999 18th Street  
Denver, Colorado 80202

77. If payment is not received by EPA when payment is due interest shall accrue from the date of the demand for the costs specified in Paragraph 72. Interest shall accrue on the unpaid balance until such costs and accrued interest have been paid in full. The interest rate shall be the rate specified for interest on investments of the Hazardous Substances Superfund in section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Interest will be compounded annually. On October 1 of each subsequent fiscal year, any unpaid balance will begin accruing interest at a new rate to be determined by the Secretary of the Treasury.

78. The United States reserves its rights to bring an action against Respondent to enforce the cost reimbursement provisions of this Order, to seek penalties pursuant to section 109 of CERCLA, 42 U.S.C. § 9609, and to bring an action pursuant to section 107 of CERCLA, 42 U.S.C. § 9607, to recoup response costs set forth in the accounting not reimbursed by Respondent.

## **XX. RESERVATIONS OF RIGHTS**

79. Except as expressly provided in this Order, each party reserves all rights and defenses it may have. Nothing in this Order shall affect EPA's removal authority or EPA's response or enforcement authorities including, but not limited to, the right to seek injunctive relief, reimbursement of response costs not reimbursed under this Order, stipulated penalties, statutory penalties, and/or punitive damages, nor shall preclude the United States from taking action to enforce this Order, nor from taking any action pursuant to CERCLA or any other available legal authority.

## **XXI. DISCLAIMERS**

80. The execution and implementation of this Order by Respondent does not necessarily indicate agreement with EPA's Findings of Fact and Conclusions of Law. Furthermore, the participation of Respondent in this Order shall not be considered an admission of liability and is not admissible in evidence against Respondent in any judicial or administrative proceeding other than a proceeding by the United States, including EPA, to enforce this Order or a judgment relating to it. Respondent retains its rights to assert claims against other potentially responsible parties at the Site. However, Respondent agrees not to contest the validity or terms of this Order, or the procedures underlying or relating to it in any action brought by the United States, including EPA, to enforce its terms.

81. Nothing in this Order is intended to release any claims, causes of action, or demands in law or equity of any party against any entity not subject to this Order for any liability arising out of or in any way relating to the Site.

## **XXII. OTHER CLAIMS**

82. In entering into this Order, Respondent waives any right to seek reimbursement under section 106(b) of CERCLA, 42 U.S.C. § 9606(b), for costs reimbursed or work performed under this Order. Respondent also waives any right to present a claim under section 111 or 112 of CERCLA, 42 U.S.C. §§ 9611 or 9612. This Order does not constitute any decision on preauthorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). Respondent further waives all other statutory and common law claims against the United States including, but not limited to, contribution and counterclaims, relating to or arising out of conduct of this removal action.

83. Except as expressly provided in Section XXIII - Covenant Not to Sue, nothing in this Order shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, subsidiary, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants, or contaminants found at, taken to, or taken from the Site.

84. Respondent shall bear its own costs and attorneys fees.

### **XXIII. COVENANT NOT TO SUE**

85. Except as otherwise specifically provided in this Order, upon payment of the final response cost billing issued pursuant to Section XIX (Reimbursement of Response costs) to be issued after issuance of the EPA Notice referred to in Section XXVII (Notice of Completion), EPA covenants not to sue Respondent for judicial imposition of damages or civil penalties or to take administrative action against Respondent relating to the Work.

86. These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Order. These covenants not to sue extend only to the Respondent and do not extend to any other person.

### **XXIV. CONTRIBUTION PROTECTION**

87. With regard to claims for contribution against Respondent for matters addressed in this Order, the parties hereto agree that the Respondent is entitled to protection from contribution actions or claims to the extent provided by Section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4). Nothing in this Order precludes the United States or the Respondent from asserting any claims, causes of action or demands against any persons not parties to this Order for indemnification contribution or cost recovery.

### **XXV. FINANCIAL ASSURANCE, INSURANCE, AND INDEMNIFICATION**

88. Respondent shall demonstrate its ability to complete the Work required by this Order and to pay all claims that arise from the performance of the Work by obtaining and presenting to EPA within 30 days of the effective date of this order one of the following: (a) a performance bond; (b) a letter of credit; (c) a guarantee by a third party; (d) internal financial information to allow EPA to determine that Respondent has sufficient assets available to perform the Work; or (e) a demonstration that Respondent's tangible net worth is at least 10 times the amount of the required financial assurance. Respondent shall establish and maintain sufficient financial assurance for performance of the estimated cost of the Work in one of the forms set forth above. During the term of this Order, Respondent shall submit information annually on the anniversary of the effective date of this Order, on the estimated cost of the next year's Work and on the form of financial assurance proposed by Respondent. If EPA determines that such financial information is inadequate, Respondent shall within 30 days after receipt of EPA's notice of determination obtain and present to EPA for approval, one of the other forms of financial assurance listed above.

89. At least 14 days prior to commencing any Work at the site pursuant to this Order, Respondent shall submit to EPA a certification that Respondent or its contractors and subcontractors have adequate insurance coverage, or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted

by, or on behalf of, Respondent pursuant to this Order. Respondent shall ensure that such insurance or indemnification is maintained for the duration of the Work required under this Order.

90. The United States shall not be liable for any injury or damages to persons or property resulting from acts or omissions of Respondent or its contractors in implementing the requirements of this Order.

91. Respondent agrees to indemnify and hold the United States Government, its agencies, departments, agents, and employees, harmless from any and all claims or causes of action arising from or on account of acts or omissions of Respondent, its employees, agents, servants, receivers, successors, or assigns, or any persons including, but not limited to, firms, corporations, subsidiaries, and contractors, in carrying out activities under this Order. The United States Government or any agency or authorized representative thereof shall not be held as a party to any contract entered into by Respondent in carrying out activities under this Order.

#### **XXVI. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION**

92. The Effective Date of this Order shall be the date it is signed by EPA.

93. This Order may be amended by mutual agreement of EPA and Respondent. Amendments shall be in writing and shall be effective when signed by EPA. EPA Project Coordinators do not have the authority to sign amendments to the Order.

94. No informal advice, guidance, suggestions, assurances, or comments by EPA or its authorized representatives shall modify the terms and conditions of this Order or relieve Respondent of its obligations under this Order, including its obligations to obtain formal approvals. Any deliverables (other than progress reports), specifications, schedules, and work required by this Order are, upon written approval by EPA, incorporated into this Order. Any non-compliance with such EPA-approved documents shall be considered a violation of or failure or refusal to comply with this Order.

#### **XXVII. NOTICE OF COMPLETION**

95. When EPA determines after EPA's review of the Final Report that all removal actions have been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including those set forth in Sections XV, XXII, and XXV, EPA will provide notice to the Respondent. If EPA determines that any removal actions have not been completed in accordance with this Order, EPA will notify the Respondent, provide a list of the deficiencies and require that Respondent modify the work plan, if appropriate, in order to correct such deficiencies. The Respondent shall implement the modified and approved work plan and shall submit a modified final report in accordance with the EPA notice. Failure by Respondent to implement the approved work plan shall be a violation of this Order.

**XXVIII. SIGNATORIES**

96. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to execute and legally bind the party he or she represents to this document.

IT IS SO AGREED:

RESPONDENT

ASARCO Incorporated

\_\_\_\_\_  
By: DATE

IT IS SO ORDERED AND AGREED:

ENVIRONMENTAL PROTECTION AGENCY, REGION VIII

\_\_\_\_\_  
Max H. Dodson DATE  
Assistant Regional Administrator  
Office of Ecosystems Protection and Remediation

## EXHIBIT 2

The following numbers are Bureau of Reclamation identification numbers which reference specific properties located within the City of Sandy, Utah.

1. S0725
2. S0763
3. S0765
4. S0766
5. S0831
6. S0833
7. S0834
8. S0843
9. S0845
10. S0846
11. S0849
12. S0851
13. S0866
14. S0869
15. S0870